

**FRIENDS OF THE FIELD'S RESPONSE TO APPLICANT'S POST-HEARING  
SUBMISSION**

**I. Determination by the Office of the Attorney General that the Proposed Use Is Not a Principal Private Education Use**

**A. The Applicant Cannot Establish that the Proposed Use is a Principal Private School Use**

The Board of Zoning Adjustment's (the "Board") decision in this case hinges on whether the Applicant can demonstrate that the proposed Off-Site Athletics Facilities are a principal private school use of the Field. However, the Applicant cannot demonstrate that the proposed Off-Site Athletics Facilities are a principal use. The Off-Site Athletics Facilities are an **accessory use** to the Maret School's private school, and are not located on the same lot as the Maret School, making them an impermissible accessory use.

The Use Categories of Subtitle B, §200.2 of the Zoning Regulation define "Education, Private" as:

- (1) An educational, academic, or institutional use with the primary mission of providing education and academic instruction that provides District or state mandated basic education or educational uses.
- (2) Above uses may include, but are not limited to: accessory play and athletic areas, dormitories, cafeterias, recreational, or sports facilities.

The Applicant's position is that the proposed Off-Site Athletics Facilities alone have the "primary mission of providing education and academic instruction," and are, accordingly, a "principal use."

***1. Advisory Neighborhood Commission 3/4G Questioned If the Proposed Use Qualified as an Accessory Use***

Prior to the Applicant filing its initial application, Advisory Neighborhood Commission 3/4G (the "ANC") Chairman Randy Speck and Single District Member John Higgins commented on the Applicant's *draft* pre-hearing statement, stating: "[i]t is a legitimate question whether Maret's use of the ECC property is properly an "accessory" use." The ANC Chairman recommended that the application "address how the ECC property qualifies as an 'accessory' since it is significantly distant from Maret's home campus," and noted that "the distance from Maret to ECC raises questions about the validity of the exception Maret is seeking. The applications should explain how the ECC property qualifies as an "accessory" use." The Applicant never answered these questions. Rather the Applicant simply claimed with no legal support that athletics fields are a "principal use." Based on its bias and partiality in favor of the Applicant, and discussed below, the ANC went silent on this issue, failing to perform their main job as the neighborhood's official voice in advising this Board on a matter which significantly affects the neighborhood. In the ultimate expression of bias and partiality, the ANC even adopted

Maret's "principal use" argument, as is evidenced in the very first clause of the Memorandum of Understanding, discussed below.

## ***2. The Zoning Administrator's March 8, 2022 Email Provides No Support***

At the March 9, 2022 public hearing, the Applicant asserted that a March 8, 2022 email from the Zoning Administrator supported the Applicant's position that the Off-Site Athletics Facilities are a principal use. The Applicant did not produce this email at the hearing, or call the Zoning Administrator as a witness. A copy of the email was produced on March 16, 2022.

The email revealed that Applicant met with the Zoning Administrator on October 1, 2021 to discuss the Applicant's draft application. In the email exchange, the Applicant's counsel expressly asked the Zoning Administrator to weigh in on the issue of whether the proposed athletic facilities can be deemed to be a **principal** private school use and therefore appropriate for special exception relief. The Zoning Administrator responded the same day, but did *not* say that the proposed athletic facilities can be deemed to be a principal private school use. His response does not even use the word **principal**.

The OAG has a well-reasoned and legally supported answer to the question posed: the principal use is defined as the "primary purposes or activity for which a lot, structure or building is occupied." Further "private education" is defined as having a "primary mission of providing education and academic instruction." Given the primary purpose of the Athletic Facilities cannot be said to be for "education or academic instruction", one must conclude the use is accessory. Without support or apparent legal analysis/ review of case law, the ZA agreed with counsel that the proposed facilities meet the definition of "Education, Private". Respectfully, this is not the right question, and if the ZA were asked whether he agreed with the OAG, we are confident the answer would be in the affirmative.

Contrary to the Applicant's representation at the March 9, 2022 public hearing, the Zoning Administrator's March 8, 2022 email exchange with the Applicant's counsel does *not* support the Applicant's assertion that the proposed Off-Site Athletics Facilities are a principal use.

## ***3. The Office of the Attorney General Disagreed***

The Applicant claims that *nothing in the Zoning Regulations* supports the statement in the OAG Letter's that "[t]he Off-Campus Athletic Facility does not qualify as a 'private school' principal use eligible for a special exception in the R-1-B zone," and that the Office of the Attorney General ("OAG") simply "created its own analytical framework in which the "'private school' principal use" consists of some (not defined) set of facilities and/or activities." The sole "analytical framework" used by the OAG is the plain language of the Zoning Regulations. It is the Applicant who employs a flawed analytical framework to reach the flawed conclusion that athletics fields alone are a principal private school use. The Applicant's framework simply reads the words: "[a]bove uses may include, but are not limited to" out of the Zoning Regulation, as though they did not exist.

As stated by the OAG, the Zoning Regulations were adopted by a public rulemaking process and can only be amended by the Zoning Commission, not the Board. If developers are permitted to write their own rules, the Zoning Commission's authority is meaningless.

**4. *The National Cathedral Case Does Not Support the Claim that the Off-Site Athletics Facilities are a Principal Private School Use***

The Applicant's reliance on the Board's decision in Application No. 16433 (final order issued August 17, 1999), is misplaced. That decision does not support the Applicant's claim that an athletics field is a principal private school use. Unlike the National Cathedral School ("NCS"), the Applicant here (i) does not operate a private school on the Field, (ii) has no special exception to do so, and (iii) is located over three (3) miles from Field.

The Board has a copy of the final order in Application No. 16433 and it is evident that the Board's decision was *not* that athletics fields are a principal private school use that can be developed anywhere, as long as an applicant operates a private school somewhere. The Board's decision was that the NCS' existing special exception could be extended for a new athletics facility on the site of its school. There is no basis on which the Board can rule in this case that the proposed Off-Site Athletics Facilities are an extension of the principal use of the Field.

The Applicant makes the preposterous assertion that "the undisputed factual record" in this case "convincingly establishes" that this Board can disregard the accessory use requirements established in the Zoning Regulations and in long-standing legal precedent, and can rule that "the proposed Off-Site Athletic Facilities are, in fact, educational facilities – **no matter how close to, or how far from, Maret's Woodley Park campus they are located.**" (emphasis added). At the same time, the Applicant acknowledges that the Board's approval of the National Cathedral School's application was "upheld on **other** grounds," (emphasis added). The Board's approval of the extension of NCS' special exception was **not** upheld on the grounds that private school special exceptions can extend to property miles away from such school, no matter how close or far.

This Board has been provided with the Court of Appeals' decision in National Cathedral Neighborhood Association v. District of Columbia Board of Zoning Adjustment, 753 A.2d 984, 986 (D.C. 2000). The Court of Appeals ruled:

Specifically, the BZA found that the facility constitutes **either an extension** of the principal use of the school **or an "accessory use."** Because the Board's finding that it is an accessory use is sustainable, we need not consider whether the facility is reasonably characterized as an extension of the principle [sic] use. (emphasis added).

The Court of Appeals determined that the BZA's finding was **either** an extension, **or** an accessory use - not both. The Applicant cannot change the Court of Appeals' decision. The Court of Appeals upheld the Board's decision that the special exception could be granted because the proposed athletic facility was an accessory use. Accessory use was the sole basis upon which the

Court of Appeals upheld the BZA's determination. The other basis, "extension of the principal use," has no precedential value and cannot be considered in this case.

The Applicant's position is that the Zoning Regulations permit the Applicant, and any developer, to export its existing special exception use from its home site to a remote site that has no special exception, and that doing so transforms that remote site into a principal use.

Athletic fields are an accessory use if located on the same property as the principal school use. In this case, the proposed athletic areas are an impermissible accessory use, because they are not on the same lot as the Applicant's private school. The ability of the community to hold a lot owner or lessee accountable for its proposed accessory use is non-existent if that owner or lessee is remotely located and permitted to establish an impermissible accessory use on the remote lot. The Board's approval of the Applicant's special exception application in this case would strip District communities of their right to hold neighbors accountable.

## **II. Dwight Mosley Sports Complex**

During the March 9, 2022 hearing for BZA Case No. 20643, Zoning Commission Chair Anthony Hood asked the Applicant to clarify their former relationship with the Dwight Mosley Sports Complex, a city facility in Northeast DC's Ward 5. In answer to that request, Maret submitted Exhibit 282C, a letter from Mr. Gerard Hall, of the Woodridge Warriors and DC Knights youth sports organization, which uses the Mosley fields.

Mr. Hall says that the Applicant helped renovate the Mosley facilities and benefited the Woodridge community from 1998-2004. This was prior to the Applicant's current agreement with the Jelleff Community Center, another city property.

The main field at Dwight Mosley is laid out with one (1) regulation (90-foot) baseball diamond and two (2) smaller baseball/softball diamonds, and can also be configured for football and soccer. Mr. Hall credits Maret's Athletic Director, Liz Hall; Director of Grounds, Jon Young; and varsity baseball Coach, Antoine Williams, for creating Mosley's premier set of fields.

Friends of the Field ("Friends") visited the Mosley fields and spoke with neighbors and a Woodridge Warriors coach and volunteers. Mr. Hall, as well as the long-time coach, had positive things to say about the Applicant's history with Mosley and the Woodridge community, and indicated that they would welcome a renewal of that association. This demonstrates that field options, especially for baseball, exist for the Applicant. We do not have any information as to why the Applicant's working agreement with the Woodridge community, which appears to have had a successful six-year run, was not continued.

Friends has proposed an alternative plan for the Episcopal Center for Children ("ECC") Field that does not include a baseball diamond. The Mosley sports complex highlights baseball, and is home to a successful, established, community-based youth sports organization in existence since 1963.

In addition, Friends learned that the Applicant's renovation of the Mosley fields included installing natural grass and a sprinkler system. According to one volunteer coach, the neighbors requested natural grass over artificial turf, because installation of the latter would have required the Applicant to fence in the field and exclude neighbors from using it. Woodridge neighbors we spoke with expressed how well the grass field has held up to heavy use. At the March 9, 2022, through testimony and in other exhibits, Friends has made the case that artificial turf at the ECC Field would create an objectionable condition, and proposed the alternative of using natural grass. The experience of the Applicant at the Dwight Mosley sports complex shows that it can be done successfully.

### **III. Concessions and Changes Made by the Applicant Based on Community Input**

The Applicant was asked to provide a summary of concessions and proposed changes in response to community feedback. In response, they referred to a PowerPoint delivered to the Board at the March 9 hearing, intimating that all changes were in response to what the community wanted. Friends disagrees with the characterization of a great many of these changes as "concessions", as detailed in the spreadsheet attached as Exhibit 1.

### **IV. Memorandum of Understanding between the Applicant and Advisory Neighborhood Commission 3/ 4G**

The Memorandum of Understanding ("MOU") signed by the Applicant and the ANC retains many flaws contained in the ANC Resolution and adds a serious problem. Although the MOU imposes obligations on the ECC after the Applicant's lease terminates or upon the purchase of ECC's property, **the ECC is not a party to the MOU**; nor is there a successorship provision governing a purchaser. Thus, if Maret did not renew its lease after the first ten-year term, the ECC would own a multi-purpose athletic facility, which is absolutely useless to ECC. But the ANC could not require the ECC to assume responsibility for maintenance or safety. While a purchaser would be bound by the Board's Order, that Order is not self-enforcing.

Nor is it clear that the MOU is enforceable. Although the Task Force has some authority and can recommend arbitration, the complainant has to convince both the ANC and the Applicant that the complaint merits arbitration. The process thus far has not convinced us that the ANC will stand up to the Applicant or support its constituents.

The erroneous omission of the ECC as a party/signatory is symptomatic of the ANC's desire to support the Applicant without considering the consequences of its actions to the community it was elected to represent. Over the objections of Friends, which represents the vast majority of the closest neighbors, the MOU permits blasting with no safeguards for the residential community. It requires neighbors to monitor the security of their homes rather than requiring the Applicant to conduct pre and post-construction surveys.

Attached hereto as Exhibit 2 is a paragraph by paragraph listing of agreements and flaws in the MOU.

## V. **Advisory Neighborhood Commission 3/ 4G's Recommendation Is Not Entitled to Great Weight Given Its Bias and Improper Process**

### A. **Background**

At the March 9, 2022 hearing, Zoning Commission Chair Anthony Hood, sitting with the Board, inquired into one of ANC 3/4G's ("ANC's") proposed conditions, concerning the composition of a local task force to oversee the Applicant's construction of the proposed athletic fields at the ECC. Friends provided testimony to the Board that the ANC had reneged on a commitment to Friends to include neighbors (Friends' supporters among them) on each side of the ECC property and instead, arrogated membership to itself and anyone it solely chose to include. It not only did this at the last minute (at the ANC's February 28, 2022, meeting), but it did so with scant advance public notice and no community input. The Applicant, in its March 16, 2022, post-hearing submission to the Board, reiterated its view that the ANC is entitled to "great weight" because it is an elected body representing its constituents in a "collaborative" process. To the contrary, **the ANC's deliberate disenfranchisement of Friends' supporters on the task force is but one of numerous, egregious examples of inequitable procedure and bias that, taken together, constitute overwhelming grounds to deny the ANC's opinion "great weight."** It is a matter of public record that Friends has filed a complaint (now being investigated) with the D.C. Board of Ethics and Government Accountability (BEGA) regarding ANC Chair Randy Speck and the ANC's conduct related to the application. Here we reiterate and expand on that complaint to substantiate our appeal to the Board to deny the ANC the privilege to which it should otherwise be entitled.

#### 1. *Case Summary*

- **The ANC, in violation of D.C. law, hid key facts from the public at one of the earliest revelations of the Applicant's proposed development at the ECC, at the February 21, 2021 ANC meeting, when the subject was intentionally omitted from the public meeting agenda and minutes but discussed by all of the ANC Commissioners.**
- **Chair Speck, in disregard of basic ethics standards, concealed his pre-existing relationship with the Applicant until prompted to disclose it by Friends, and then failed to recuse himself or even to delegate conduct of the review to his fellow commissioners. Rather, he chose to commandeer it and, in doing so, perpetuated an appearance of preference.**
- **Chair Speck and Commissioner John Higgins used privileged access to the Applicant's draft application (when the citizens had no such access) to provide preferential, professional advice in redlining the document for the Applicant's benefit.**
- **Chair Speck offered himself as a mediator between Friends and the Applicant through the ANC's *ad hoc* advisory committee, and then proceeded to favor the Applicant throughout, making no attempt to bring the parties together.**
- **In his draft ANC resolution and proposed conditions, Chair Speck unilaterally reversed positions previously agreed to in the ANC *ad hoc* advisory committee, each of which favored the Applicant's interests with adverse effects for the neighbors, specifically Friends. He then proposed, at the ANC meeting on February 28, 2022, that the Commission approve the final agreement with no citizen input – which it did.**
- **Chair Speck and the ANC violated their statutory mandate "to be their**

**neighborhood's official voice,”** adopting a totally unorthodox stance that the ANC must reflect the needs of the broader District, thereby pre-determining a review structure that at every turn failed to prioritize the neighbors and favored the Applicant (which, it bears stressing, is not located in the ANC’s jurisdiction), and causing the ANC to lose sight of the heart of the matter: avoiding the creation of objectionable conditions that would be borne by nearby residents.

**B. Documenting the ANC’s Inequitable Procedure and Bias**

**1. *Material Omissions in ANC’s Recommendation of Approval of the ECC’s Historic Landmark Designation***

At its February 22, 2021, meeting, the ANC considered the application to the Historic Preservation Review Board (HPRB) by the ECC for historic landmark designation of a 2.4-acre portion of its campus. The 2.4 acres is significant because the entire campus covers more than seven acres. Only 2.4 were proposed for historic landmark designation, however, because the ECC and the Applicant had already negotiated a lease for the other five (5) acres – precisely for the Applicant to build its athletic fields. The ECC’s Executive Director made the purpose of the meeting clear, remarking that she was “hoping that we can landmark our facility **to greater ensure that we will be able to return to the work** that’s been so dear to us,” although the ECC had previously operated for over 90 years without the need for historic designation. **The ANC knew in advance of the ECC-Maret lease as well as the Applicant’s development plans for the property, plans that would significantly impact the neighborhood. The ANC failed to disclose this information to the public prior to approving recommendation of the ECC’s proposal.** Indeed, there were material omissions from both the published ANC agenda and meeting minutes that respectively deprived the public of proper notice and key information. Friends believes, and has so conveyed to BEGA, that the ANC’s actions violated D.C. law, including the Open Meetings Act, the Advisory Neighborhood Commission Act, and the Code of Conduct.

**2. *Failure by ANC Chair Speck to Disclose a Pre-Existing Relationship with the Applicant***

Chair Speck had a pre-existing relationship with the Applicant that he concealed from the public until prompted to disclose it by Friends on January 13, 2022. His daughter attended Maret from 1990-1996, during which time current Head of School Marjo Talbott began her tenure. **Friends believes Chair Speck betrayed the public trust by not proactively declaring his past association with the Applicant.** Are we to believe the Applicant would have overlooked an alumna parent who just happened to be the Chair of the ANC with jurisdiction over their application for development of athletic fields? **Friends maintains the manifest bias shown by the ANC throughout its review of the present application has its origins in the Speck-Maret connection.**

**3. *Failure by ANC Chair Speck to Recuse Himself Due to a Pre-Existing Relationship with the Applicant or to Delegate the Lead Role to Another Commissioner***

Once Chair Speck disclosed his past association with the Applicant – again, only at

Friends’ prompting – we believe it was incumbent upon him to do one of two things: recuse himself entirely or delegate management of the case to another ANC Commissioner. He failed to do either. **To the contrary, Chair Speck commandeered the ANC’s review:** presiding over public ANC discussions, directing the *ad hoc* advisory committee created to assess and amend the proposal, serving as “mediator” (see discussion below) between Friends and the Applicant, writing the final ANC report, resolution, and agreement, and representing the ANC before the Board. Indeed, Chair Speck arrogated to himself the right and role as project lead, supplanting Commissioner John Higgins, in whose Single Member District the ECC is located. **Friends notes the irony of Chair Speck’s taking a leading role while at the same time Board Vice-chair Lorna John has recused herself from case #20643 because a family member currently attends Maret.**

**4. *ANC’s Provision of Professional Counsel to Benefit the Applicant’s Proposal Prior to Submission and Before the ANC Constituents Saw the Document***

Prior to the Applicant’s November 1, 2021, submission of its application for Special Exception zoning relief to the Board, Chair Speck and Commissioner Higgins received and redlined the Applicant’s draft text. The edits included specific strategic, technical, and legal advice to the Applicant, including views on the suitability of the Applicant’s legal argument based on “accessory use.” The ANC has claimed “It is our job to help identify community concerns and advise applicants of pitfalls that they would be well advised to avoid ...” Yet this statement overlooks Chair Speck’s pre-existing relationship with the Applicant. Moreover, there is no evidence that the Commissioners **were channeling constituent concerns, and there is evidence to the contrary. There were no meetings with constituents to ascertain our concerns with the application until after the Applicant submitted its application to the Board.**<sup>1</sup> Only the Commissioners had the privilege of seeing and providing feedback on the application *before* it was submitted on November 1, 2021.

**5. *Manifest Bias in Favor of the Applicant in the ANC Advisory Committee***

In December 2021, the ANC created an advisory committee to consider the Applicant’s plan. The advisory committee was composed of Chair Speck and Commissioner Higgins and six (6) community representatives, four (4) of whom were on the Friends steering committee. At the outset, Chair Speck stated that he and Commissioner Higgins would serve as mediators. Whereas in true mediation, the mediator transmits proposals and tries to nudge the parties together, these Commissioners never did that. Friends provided its list of desired changes to the proposal, the Applicant rejected them all, and the Commissioners made no effort to bring the parties together to discuss compromises. **The Commissioners February 6, 2022, draft agreement between the neighbors and the Applicant adopted the Applicant’s position on all substantive issues – field design, field use, environment, leasing, etc. – and included none of Friends’ suggested improvements,** even one the Commissioners had seemed to favor previously, that the Applicant would not schedule home games on the same days that nearby St. John’s College High School scheduled home games. Notably, this is not the sole

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<sup>1</sup> The September 27, 2021, public ANC meeting featured merely a preview of the Applicant’s plans, not a draft application for citizens to see and react to.

place that the Commissioners have simply adopted the Applicant's position on a substantive issue. In the initial paragraph of the Memorandum of Understanding ("MOU"), they adopt the Applicant's legal position that their application before this Board is for "special exception relief for a principal private school use."

In two (2) places the proposal protected the Knollwood senior residential facility, where Commissioner Higgins lives, from traffic that might impede emergency vehicles even though Knollwood is a half-mile from the ECC, and no such protection was offered for neighbors' residences nearer the ECC. **On February 15, Friends' response to the ANC's proposal set forth a compromise, accepting several key elements of the Applicant's proposal; however, there was no interest in reaching agreement with Friends, even concerning issues on which all parties agreed.** If the Applicant submitted comments, the Commissioners did not share them with the advisory committee, in contrast to Friends' forthright, good-faith submissions which the Commissioners did share with the Applicant. **Again, there was no effective mediation; it was all one-sided – in favor of the Applicant.**

#### ***6. Further Bias in the Unilateral Changes in the ANC's Final Resolution and Proposed Conditions***

On Sunday, February 27, 2022, the ANC distributed a red-lined final resolution showing changes resulting from its February 24, 2022 meeting, and submissions from the Applicant and the Friends. Among the changes:

1. Fines imposed by the task force or the arbitrator were capped at \$25,000.
2. Each member of the task force would be appointed by the ANC without designated representatives from the four streets surrounding the field.
3. The Applicant and the ANC could at any time propose hours exceeding those in the resolution.
4. The Applicant would be permitted to sell food for use on the Field.

No proposed change was disadvantageous to the Applicant's interests, but each was adverse to the Friends' members and constituents. Two (2) changes merit further explanation.

As regards the task force, the advisory committee agreed and Chair Speck proposed in his draft agreement (referenced above) that in the construction phase of the Applicant's development the task force would be composed of "at least one resident from each of these areas: (i) 28<sup>th</sup> Street, NW, (ii) Nebraska Avenue, NW, (iii) Utah Avenue, NW, and (iv) Rittenhouse Street, NW. The task force shall also include at least one ANC Commissioner and at least two other at large persons." Yet **in the final ANC resolution and proposed conditions, the ANC (Chair Speck) unilaterally struck the prior task force composition and replaced it with this formulation: "... a Task Force composed of three to five ANC Commissioners or Commission appointed designees.** The Task Force members will be selected by ANC 3/4G, and their names and contact information will be posted on ANC 3/4G's website (anc3g.org). Maret, the General Contractor, and the ECC may be represented at all Task Force meetings as ex officio members and will report on the status of construction, the upcoming construction schedule, and any problems or concerns that residents have raised." **The ANC thus arrogated**

**to itself the right to control who sits on the task force, with no provision for participation by immediately adjacent neighbors despite our obvious and pressing interest in monitoring any development at the ECC.**

Similarly, in the final proposed conditions, the ANC summarily reversed its previous position on hours of use, equally of great concern to Friends. The advisory committee had discussed and agreed that hours of use would not change over time to prevent progressively greater use of the facility by third parties. The advisory committee participants repeatedly emphasized during the weekly meetings with the Commissioners the necessity of having the hours' restrictions run the duration of the ECC-Maret lease, including lease extension terms, to avoid any new neighbors having to redo any of the extensive negotiation in which the advisory committee participants engaged in good faith as community representatives. **Notwithstanding our concerns, the ANC inserted language in the final draft of conditions, stipulating "Maret may submit a proposal to ANC 3/4G and the BZA to modify the approved hours of use set forth in this Condition #3, not earlier than three (3) years from the date of the issuance of the written Order in BZA Application No. 20643. Similarly, ANC 3/4G may submit a proposal to Maret and the BZA to modify the approved hours of use set forth in this Condition #3, not earlier than three (3) years from the date of the issuance of the written order in BZA Application No. 20643."** While ANC Chair Speck told the Board on March 9, 2022 that the hours could increase or decrease, it is naïve at best to think the hours of use would decline over time

As Chair Speck testified at the March 9, 2022 Board hearing, the ANC determined not to include the residents on the streets surrounding the field, who live closest to the Field, in resolving disputes with the Applicant. Indeed, at the February 28, 2022 ANC meeting at which the Commission ratified the changes to the conditions, Chair Speck gaveled them through with no public discussion. Notably, the Task Force that Chair Speck established for the construction of Ingleside (BZA Case No. 18898), which the Chair held up to the advisory committee as the gold standard, is not restricted to ANC commissioners or individuals appointed by the ANC, but refers to "stakeholders" that would include neighboring citizens.

#### **7. *ANC Disregard for Its Mandate, Driving the Bias in Favor of the Applicant***

The above instances of bias in favor of the Applicant were part and parcel of the way the ANC rationalized and structured its review. D.C. government makes it clear that "the ANCs' main job is to be their neighborhood's official voice in advising the District government (and Federal agencies) on things that affect their neighborhoods." **Willfully ignoring its mandate, the ANC assigned itself a much more expansive role**, as explained in paragraph 20 of its resolution on the Applicant's proposal:

"The Commission evaluated the application based on whether, taken as a whole, the proposed project is likely to create objectionable impacts on neighboring properties. While the immediate neighbors have a significant interest in the projects' impacts on them, theirs is not the only interest the Commission must consider. The Commission has an obligation to weigh all of the impacts on

the community, including the effect the project will have on ECC and its students, Maret's students and parents, youth sports organizations in the District, Lafayette Elementary School children, neighbors who wish to use a nearby athletic field, and even those District of Columbia Public School (DCPS) students who will have greater access to the Jelleff Recreation Center field *if* Maret has an alternative field and relinquishes its priority scheduling rights at Jelleff<sup>2</sup>. Indeed, each Commissioner took an oath to "exercise my best judgment and . . . consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole." (Emphasis added).

There is nothing in the ANC's mandate to authorize such conduct on its part. It has no authority to act like a mini-city council, reconciling interests from across the city. Other neighborhoods have their own ANCs to represent their interests; ANC 3/4G now asserts that the positions they are espousing reflect the will of residents in other ANCs, and that ANC 3/4G commissioners have authority to "represent" District residents in other ANCs, who did not vote for them and who already have elected representatives. **Taking this expansive view of "the community," ANC 3/4G legitimized disenfranchising the neighbors, specifically Friends, and placed the interests of diverse groups that do not reside within the ANC's jurisdiction over the concerns and needs of the residents who elected them.**

More particularly, the expansion, indeed distortion, of the ANC's role provided the pretext for this ANC to prioritize the application not only by incorporating "Maret's students and parents" but also a host of organizations with clear vested interests – youth sports organizations seeking playing fields, Ward 3 residents and ANC Commissioners (past and present) keen to see the Applicant depart the Jelleff Recreation Center at 3265 S Street, N.W., et al. **By defining its job as serving the entire city rather than representing its own residents, the ANC cleverly executed a review destined to favor the Applicant over the neighbors.**

In the Friends' January 13, 2022, position statement, we urged the ANC to prioritize the neighbors. In advance of the February 1, 2022, public ANC meeting at which Friends, the Applicant, and the ECC presented their respective plans or views, Friends urged the ANC to prioritize the neighbors. As the ANC review neared completion, Friends further urged the ANC to prioritize the neighbors. At every opportunity the ANC declined to do so.

Public ANC meetings on the Applicant's proposal devolved into a cacophony of voices from parties far outside the neighborhood. The Applicant's supporters were allowed a platform regardless of their status as neighbors. Heads of sports organizations were given equal time to plead their cases despite their obvious biases towards the Applicant.

Moreover, by giving prominence to voices and opinions from far beyond the boundaries

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<sup>2</sup> As of this writing, however, Maret has not relinquished its control over usage hours at Jelleff. Perhaps Chairman Speck also has inside information into Maret's plans there. Citing this speculative possibility of something that may or may not occur in ANC 2E, to justify their vote in this matter, is yet another demonstration that ANC 3/4G has not performed their role as the voice of the community that elected them.

of ANC 3/4G, the Commission lost sight of the zoning principles at the heart of the matter. Zoning regulations fundamentally concern location, proximity, suitability, precedent, and avoiding the creation of objectionable conditions that would be borne by nearby residents.

## Exhibit 1 - Concessions and Changes Made by the Applicant Based on Community Input

Re: **BZA #20643**: Friends of the Field (FoF) comments on Maret's **Exhibit 282D** submitted March 16, 2022:

"Response to Neighborhood Input" or "Proposals and Changes"

Number	Maret comment	FoF Discussion	FoF Conclusion
1	Located bike racks interior to the site to promote biking to the fields	Bicycle accommodation was required as part of DDOT's review of Maret's "Comprehensive Transportation Review" (CTR) including "Transportation Demand Management" mitigation to reduce car trips. The location was selected by Maret.	<b>Not a response or concession to neighbors.</b>
2	Reduced width of curb cut to 24 feet	Required by DDOT/ Public Space Committee review of commercial driveway. 24 feet is maximum allowed width.	<b>Not a response or concession to neighbors.</b>
3	Adjusted parking lot to be fully outside the Building Restriction Line (BRL)	Required by DDOT/ Public Space Committee review of commercial driveway. Proposed parking lot is still in the property's front yard, requiring Special Exception relief.	<b>Not a response or concession to neighbors.</b>
4	Shifted rain garden toward interior of site and significantly enhanced surrounding landscape buffer	It is not clear how all elements of the stormwater management plan would work together. It is unclear what contribution is being provided by plants, engineered soil, and piped and overland outflows. We believe the parking lot is intended to capture overflow from the playing field, and the rain garden is intended to drain the parking lot. Therefore, the rain garden is located adjacent to the parking lot, and sized accordingly.	<b>Not a response or concession to neighbors.</b>

## Exhibit 1 - Concessions and Changes Made by the Applicant Based on Community Input

5	Designed integrated stormwater management system to significantly improve existing stormwater conditions for neighboring properties.	Required by the plumbing code and/or DOEE site plan review.	<b>Not a response or concession to neighbors.</b>
6	Enhanced perimeter landscape screening throughout the site to provide visual and noise buffers	<p>It is unclear what buffering would actually be provided by proposed plantings. The plan recognizes that visual buffers would be needed to mitigate 12 vertical feet of intrusive stepped walls. The parking lot would be elevated to the same height as the eaves of an adjacent residence. The plan envisions 20 to 30 feet of visually intrusive netting, that would not be obscured by plantings for many years to come.</p> <p>The plantings shown would have little or no mitigating effect on objectionable noise conditions. None of Maret's renderings show leaf-off (winter dormancy) conditions for the proposed plantings.</p> <p>The stepped design of retaining walls with 8-foot-wide terraces effectively decreases the screening benefit of proposed plantings. The field, fencing, and netting would rise high above the retaining walls and planted areas.</p> <p>Dozens of existing trees would be sacrificed.</p>	<b>Not a response or concession to neighbors.</b>
7	Agreed to utilize football goal posts that are removeable [sic] after the fall season	The 40' goal posts are an eyesore.	<b>Removing goal posts and storing them for the off-season was a responsive concession to neighbors concerning this objectionable condition.</b>
8	No lighting of athletic fields to ensure that all activity will take place during daylight hours	This was proposed by Maret/ECC in the original and every subsequent presentation, beginning September 27, 2021 until today.	<b>Not a response or concession to neighbors.</b>

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9	No amplified sound systems, or loud noisemakers (e.g. cowbells, bullhorns, musical instruments) shall be permitted (note: whistles for coaches/officials and shot clocks for lacrosse games will be permitted)	<p>This was proposed by Maret/ECC at the original and every subsequent presentation, beginning September 27, 2021 until today.</p> <p>There is no proposed mitigation of the repetitive "tonal, impulsive" sounds of aluminum bats repeatedly hitting balls from pitching machines balls batting cages. No recognition of this intrusive noise has been offered to neighbors.</p>	<b>Not a response or concession to neighbors.</b>
10	Reconfigured location and heights of retaining walls throughout site to respond to neighbors' input	Retaining walls were reconfigured because modifying the earliest concept plan by moving the field north of the BRL was more acceptable to DDOT/ Public Space Committee's consideration of impacts to public space.	<b>Not a response or concession to neighbors.</b>
11	Reduced height of netting along Rittenhouse Street alley from 30 to 20 feet above field level and changed the color of netting support poles throughout site to minimize visual impact	<p>The height of protective netting is calculated based on the location and dimensions of the field, proximity to structures, and the variety of team sport uses. The color of netting and poles are options chosen at the time of purchase.</p> <p>Elimination of netting along a limited section of the Rittenhouse Street alley is claimed to reduce stress on a heritage tree, at a field location where tall netting is not needed.</p>	<b>Not a response or concession to neighbors.</b>
12	Reduced height of scoreboard by 8' and shifted its location from center of Rittenhouse Street alley to northwest corner of site, where the field elevation is lower than the alley and it will be buffered by relocated Heritage Trees	The scoreboard would still be prominently visible along the Rittenhouse Street alley. Deciduous trees to the west (only) will not provide a winter buffer. This is an obviously preferable location to the original location shown directly behind Rittenhouse Street homes.	<b>Moving the scoreboard was a responsive concession to certain Rittenhouse Street neighbors concerning this objectionable condition.</b>

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13	Provided community open space amenity (approximately 9,800 SF) at site of relocated Heritage Trees	<p>This area with relocated heritage trees is an isolated benefit, but otherwise serves no purpose for Maret. It cannot be used for field sports due to its elevated position, triangular shape, and distance from driveway entrance. It was designated from the start as a tree relocation area.</p> <p>It is unclear whether this area would be useful or desirable to neighbors. It is unclear how it would be accessed and maintained.</p>	<b>Not a response or concession to neighbors.</b>
14	Secured site with perimeter fence -- upgraded from chain link to ornamental picket fence up to 6 feet in height -- to ensure players and visitors do not have access to adjacent properties and alleys from the playing fields	Fencing the site was proposed by Maret/ECC at the original and every subsequent presentation, beginning September 27, 2021 until today. 6-foot tall-fencing would do more to deter deer than a 4-foot fence. The original split rail fence along Nebraska Avenue would be sacrificed.	<p><b>Securing the site with a fence is not a response or concession to neighbors.</b></p> <p><b>Upgrading the proposed fencing was a responsive concession to neighbors concerning this objectionable condition.</b></p>
15	Provided additional vegetative screening to ensure spectators do not view field activity from alley or green space adjacent to Heritage Trees	<p>It is unclear from the concept documents what is actually being provided in the plan. Visual screening would be needed to prevent spectators from using the alley and triangular green space as private "box seats" for games.</p> <p>Screening would be required as a consequence of creating an attractive, prominent viewing spot for spectators too close to residences.</p>	<b>Not a response or concession to neighbors.</b>

## Exhibit 1 - Concessions and Changes Made by the Applicant Based on Community Input

16	Enhanced vegetative screening along Utah Avenue alley to provide additional visual and noise buffers	<p>It is unclear from the concept documents what is actually being provided in the plan. Any additional plantings (once mature) would help obscure the high netting and goal posts. The vegetation will not mitigate noise.</p> <p>Screening is required as a consequence of removing natural vegetation and creating visually intrusive, tall, unattractive barriers around the proposed field.</p>	<b>Not a response or concession to neighbors.</b>
17	Located storage structures and batting cages to minimize impact on surrounding residential neighbors	These changes are the result of obviously better choices emerging during the design process. The new location of batting cages still does not address the repeated "tonal, impulsive" noise from aluminum bats, or the noise of pitching machines. It is unclear whether Maret plans to sound-proof batting cages to meet the required 60 dB limit for the R-1-B zone and reduce this objectionable condition.	<b>Not a response or concession to neighbors.</b>
18	Relocated trash collection away from Utah Avenue alley	The original location was adjacent to a residence, and would have created an objectionable condition in terms of unsightliness, pick-up noise, foul odors, and vermin.	<b>Not a response or concession to neighbors.</b>
19	Eliminated existing curb cut	Required by DDOT / Public Space review.	<b>Not a response or concession to neighbors.</b>
20	Shifted location of bus pick-up/drop-off zone to the west to improve sight lines.	Recommended during CTR Office Hours by neighborhood and ANC reviewers to improve driveway sightline safety concerns. This location for pick-up/drop-off requires all pedestrians entering the site to cross the parking lot driveway.	<b>Dedicating a 100-foot pick-up/drop-off zone was not a response or concession to neighbors. Relocating pick-up/drop-off further west to improve sightlines at the commercial driveway was a responsive concession to neighbors' safety concerns.</b>

## Exhibit 2 – MOU Summary

Friends of the Field responses to MOU between Maret School (Marjo Talbott) and ANC 3/4G (Randy Speck)	
Re: BZA case #20643, Exhibit #282E, Document executed March 15, 2022	
Reference in MOU	Friends of the Field response
1. Compliance	
a.	We disagree with the plans as submitted. FoF has outlined an alternative scheme. Also, please see our submission: "FoF response to Maret Exhibit 282D" challenging Maret's interpretation of concessions or responses to neighbors.
b.	Agreed, demountable goal post storage should be as unobtrusive as possible.
c.	This appears to contradict Maret's interpretation of concessions to neighbors, and should be clarified.
d.	With the one field scheme the netting would surround that field and not the site.
e.	With the one field scheme the landscaping would be different and additional trees could be added in open space that would contribute to the canopy.
f.	With the one field scheme fewer if any heritage trees would need to be removed and/or relocated.
g.	We disagree with the 25-year storm design. Given increased intensity and frequency of major storms, we request a 50-year storm design, and accommodation for a 200-year storm.
h.	We oppose artificial turf and request natural turf. Testimony presented to the BZA at the 3/9/2022 hearing clarified that the objectionable conditions of artificial turf are not limited to choice of infill material, but rather extend to constituents of the plastic grass fibers themselves (including, for example, PFAS chemicals). In contrast, Maret's installation of natural grass at Dwight Mosley Sports Complex continues to be used today.)
i.	This appears to conflict with item '1.c' above.
j.	Agreed, but Maret must demonstrate that crowd noise does not constitute a nuisance. Note: testimony at the 3/9/2022 BZA hearing by Friends of the Field's acoustical consultant.
k.	Agreed, but current plans do not show walkways nor parking lot as permeable pavers/paving.
l.	This should be elaborated upon. What is in the annual report? How do citizens comment and how are those comments incorporated into Maret's operation? What mechanism is there for dispute resolution?
2. Lighting, Scoreboard and Noise Abatement	

## Exhibit 2 – MOU Summary

a.	Appears to conflict with 2.b, below. Security lighting is only for the parking lot, not the entire sports complex.
b.	Partially agree. Light poles should be 10' maximum height. 12' height is NOT residential scale.
c.	Agreed, and it should be added that it not be lighted. Location of the scoreboard would change in the single field scheme.
d.	Agreed.
e.	Agreed, however there remains the need for sound mitigation. Note: testimony at the 3/9/2022 BZA hearing by Friends of the Field's acoustical consultant.
3. Use of the Athletic Fields	
a.	We object to subleasing. The field should be for Maret's academic use only.
b. i, ii, iii, iv, v	<p>Hours of use need to be consistent, clear, understandable, and enforceable. Maret must monitor to assure that field is not used without permission.</p> <p>We propose school use only. No subleasing of any kind; only for the academic use by Maret and or ECC/DCPS. No use by clubs, leagues or outside programs (even those that Maret may sponsor or be affiliated with) that are not part of the academic program. (Use by DC Public Schools TBD but always within hours permitted for field use. See Curfew below. )</p> <p>No Sunday use, or use on Federal or DC holidays.</p> <p>No Saturday use EXCEPT: Max. 5 home games per year.</p> <p>Curfew: Consistent and enforceable hours: Use only on Weekdays between 9 am - 6:30 pm; and on Saturdays (when permitted) between 10 am - 5 pm.</p> <p>Maret/ECC curfew hours shall apply to the entire complex including the Field House and parking area. The area is to be completely vacated after curfew.</p> <p>No Summer Camps permitted.</p> <p>Public can access the field for casual play when not being used by Maret, until curfew.</p>
c.	ECC and DCPS can use the fields during the hours prescribed in 3b above.
d.	Agreed, but with consistent hours. Neighbors should not have to consult a calendar or website to check whether they can quietly enjoy their property.

## Exhibit 2 – MOU Summary

e.	Unacceptable. The hours must be established for a longer period. If Maret would like to change them, this would be prohibited for at least 10 years, and only then permitted with consent of 75% of neighboring property owners within 200' of the limits of the property, with all legal and administrative fees to be paid by Maret. Neighbors should not be put in the position of frequently and repeatedly defending their right to enjoy peace and quiet.
f.	Neighborhood access should be permitted when the field is not scheduled for use during the hours prescribed in 3b above. No organized teams or leagues permitted. Gates, field house and site are to be fully vacated outside the prescribed hours.
g.	The neighborhood also reserves the right to object to disorderly use of the field. How is this to be enforced?
h.	Agreed. We note that ANC 2E is eager to have Maret relinquish its use of Jelleff.
4. Transportation and Parking.	
a.	The parking is acceptable as long as it is not located in the front yard of the property which requires a zoning exception. The one field scheme proposed by FoF, with the field in a roughly North-South alignment adjacent to ECC, meets the zoning requirement.
b. TDM	
b. i.	Agreed. All bike parking to be within Maret's site and not in public space. DDOT called for 8 (not 6) short term bicycle racks.
b. ii.	Agreed. However, suggested pick-up/drop-off zone requires all entering pedestrians to cross the driveway, creating a safety conflict. How are prohibition against bus and car idling to be enforced by Maret?
b. iii. Reduction of single occupancy vehicles	
point 1	Agreed
point 2	Agreed.
point 3	Agreed.
point 4	Agreed.
point 5	This should be part of a DDOT-administered Performance Monitoring Plan, with enforcement provision.
point 6	Agreed.

## Exhibit 2 – MOU Summary

point 7	Agreed. Absolutely no home games / rivalry games at the same time.
b. iv.	Missing - not used
b. v.	Missing - not used
b. vi.	Agreed.
b. vii.	This should be part of a DDOT-administered Performance Monitoring Plan, with enforcement provision.
b. viii.	Agreed, though this is part of basic motor vehicle operation, and should be self-evident.
b. ix.	Agreed.
b. x.	Friends of the Field asserts that the commercial driveway entrance proposed for the field and parking lot should be treated as a school crossing. The plan proposes a dangerous condition, in which all pick-up and drop-off pedestrians would enter the field and parking lot via the driveway, or by crossing the driveway. Additionally, it will be attractive for visitors and spectators to park on the south side of Nebraska and cross mid-block. Much of this pedestrian activity can be predicted to occur during afternoon rush hour conditions. High-visibility crosswalk pavement markings, pedestrian crossing signs, and perhaps flashing beacons should be deployed at the driveway entrance. The proposal from DDOT to install such measures at the intersection with 29th St, more than 330 feet away, is not adequate.
b. xi.	Agreed. Likewise, vehicles servicing the field house and/or field should not use the alley.
b. xii.	Agreed. How will this area be accessed? Could there be a playground here?
b. xiii.	Agreed. Additionally, No food vendors or food trucks on site or servicing the site.
b. xiv.	Disagree. Site curfew hours should be established and enforced. See item 3b above.
b. xv.	Disagree in part. Preference should be given to all emergency vehicles, not only those servicing Knollwood.
b. xvi.	Disagree in part. Friends of the Field encourages instituting an enforceable Performance Monitoring Plan, and strongly asserts the need to treat the driveway entrance as a school crossing. Refer to testimony from Tom Downs (former Director of DDOT) at the 3/09/2022 BZA hearing.
5. Construction	
5. a. Pre-construction	

## Exhibit 2 – MOU Summary

a. i.	The log is to be available to any neighbor and not just the ANC.
a. ii.	After hours work to be cleared with the neighbors.
a. iii. Home Damage Impact	
A.	Absolutely no blasting to be allowed.
B.	Agreed.
C.	This is crack monitoring. Maret is required to monitor all homes for damages. It is not the responsibility of the homeowner to report the status of damages and negotiate with Maret. In addition to stormwater damage, damage from groundwater released during construction should be monitored and compensated.
a. iv. Construction Traffic Control	
A. Routes	
i.	No construction vehicles allowed to use alleys without expressly authorized public space permit.
ii.	Agreed
iii.	This should apply to all emergency vehicles, not only those servicing Knollwood.
B.	Agreed.
C.	No work can begin before 8 AM during the week. No Saturday or Sunday work.
D.	Agreed, and this should not modify or reduce existing codes and requirements.
v. Construction Parking	
A.	Agreed.
B.	Agreed.
C.	Agreed.
D.	Contractor is responsible for enforcing parking requirements. This should be monitored by the holder of the construction contract, Maret.

## Exhibit 2 – MOU Summary

vi. Communication	Agreed.
vii. Site Preparation Elements	Agreed to at a minimum. Contractor to meet all codes and regulations. What is the enforcement mechanism?
A.	Agreed.
B.	Agreed.
C.	No Food Trucks.
D.	Agreed.
E.	Agreed, contractor to meet all codes and regulations.
viii. Management and Community Relations	
A .	The MOU omits the Community. The ANC initially proposed a Task Force that would have included representatives from the four streets surrounding the Field. We endorsed that concept, which was retained in the ANC's Draft Resolution. When we complained that these neighborhood representatives should be elected, the final Resolution and the MOU deleted elected representatives from the streets, so that all members of the Task Force would be appointed by the ANC. The ANC's and Maret's interpretation of the "Community" does not include those people most affected by the construction and/or use of the Field, including blasting, which ANC believes should be permitted during construction.
B.	See A above.
C.	See A above.
D.	See A above.
E.	See A above.
5. b. Construction Period	
i.	No construction before 8 AM weekdays. No Saturday or Sunday Construction.
ii. Perimeter elements	No construction vehicles allowed to use alleys without expressly authorized public space permit.
A.	Agreed.

## Exhibit 2 – MOU Summary

B.	Fences and storage sheds of abutting properties on Nebraska Ave. and 28th Street to be included in this paragraph.
iii. On-Site Elements	
A.	On this very large site these should be located as from homes as possible, certainly not closer than 100 feet.
B.	Agreed.
C.	Agreed.
6. Dispute Resolution	The Task Force is the first step, but cannot issue fines higher than \$25,000. Is that cap per offense or total for the entire project? If the Task Force should deadlock, a dispute can go to arbitration. But there is no trust that the ANC will adequately represent complainants in this process. If the ANC does not represent complainants, who does?
A.	See 6 and viii. A. above.
B.	See 6 and viii. A. above.
C.	See 6 and viii. A. above.
7. Duration and Counterparts	The Agreement remains in effect for as long as Maret maintains its lease with ECC. After that, ECC assumes responsibility for the Field. BUT ECC IS NOT A PARTY TO THE AGREEMENT. The MOU cannot bind non-party ECC. Nor can the MOU control what non-party ECC does with the property after Maret cedes control. Friends of the Field proposed making ECC a party just for this reason.
A.	See 7 above.
B.	See 7 above.
C.	See 7 above.
	Need to ADD: During Maret's use of the field, a point of contact for all neighbor complaints and issues should be available 24/7, with a one hour turnaround time, to respond to and resolve immediate problems.